

FINANCE AND BUSINESS SERVICES, CHAPTER 23.

SUBCHAPTER 4. TUITION FOR PRIVATE SCHOOLS FOR THE DISABLED

6A:23-4.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

“Advertising costs” means the costs incurred for, but not limited to, the following: cable television, videos, open houses, marketing and public relations. (The cost of a web site, the printing of descriptive brochures, newspapers advertising and advertising in a telephone book are not included in this definition.)

“Administrative costs” means those costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts.

“Assistant Director” means an individual whose job function includes one or more of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school’s board of directors; the authorization to recommend all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school’s board of directors; the authorization to direct school operations and programs and to supervise and evaluate administrators, supervisors, school staff including teaching staff and office staff including the school business manager; and/or the administration and supervision of school operations staff and programs. The holder of this job title shall possess a bachelor’s degree from an accredited institution.

“Average daily enrollment (ADE)” means the sum of the days present and absent of all school students enrolled in the register(s) of the school divided by the number of days the approved private school for the disabled was actually in session for the entire school year rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days.

“Bonus” means any payment to an employee which:

1. Is not part of the employee’s executed contracted salary;
2. Is not part of the employee’s base salary in the subsequent school year;
3. Is determined in an arbitrary, unreasonable and capricious manner; and

4. Is paid solely at the discretion of management.

“Business Manager” means an individual whose job function includes one or more of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction, and maintenance; personnel administration; administration of transportation and food services and data processing. The holder of this job title shall hold a bachelor’s degree in business, accounting, finance or economics from an accredited institution or shall hold a standard school business administrator’s certificate.

“Certified actual cost per student” means the actual allowable cost for the entire school year plus the applicable maximum surcharge/working capital fund divided by the average daily enrollment.

“Conditional approval status” means the approved private school for the disabled is precluded from accepting new students.

“Director” means an individual whose job function includes one or more of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school’s board of directors; the authorization to recommend all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school’s board of directors; the authorization to direct school operations and programs and to supervise and evaluate administrators, supervisors, school staff including teaching staff, and office staff including the school business manager; the administration and supervision of school operations staff and programs. The holder of this job title shall hold a bachelor’s degree from an accredited institution.

“Entertainment expenses” means the cost of providing any type of food/beverage to school officers, school directors/trustees, consultants and/or individuals providing services to the school at any time or to school employees after school hours.

“Executive Director” means an individual whose job function includes one or more of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school’s board of directors; the authorization to recommend all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager, to the school’s board of directors; the

authorization to direct school operations and programs and to supervise and evaluate administrators, supervisors, school staff including teaching staff, and office staff including the school business manager; the administration and supervision of school operations staff and programs. The holder of this job title shall hold a bachelor's degree from an accredited institution.

“Extraordinary service” means the services of a one-to-one aide for a student.

“Final tuition rate” means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23-4.2(a).

“Instructional costs” means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts.

“Keyman life insurance” means insurance on staff members for which the school is the beneficiary of the life insurance policy and the expense is charged as a fringe benefit.

“New private school for the disabled” means a private school for the disabled in the first two years of operation.

“Public school placement restricted working capital fund” means a non-profit school's total public school restricted assets less the total public school restricted liabilities.

“Related services” means the type of services defined in N.J.A.C. 6A:14-1.3.

“School year” means the time period a school is in session either from July through June, August through June or September through June.

“Severance pay” means compensation in addition to regular salaries and wages that are paid by a school to an employee whose services are being terminated.

“Start up costs” means those costs such as, but not limited to, legal fees, filing fees, furniture, fixtures, equipment and facility costs incurred by a school prior to nine months of receiving Department approval to operate as an approved private school for the disabled. A salary would not be considered an allowable start-up cost.

“Surcharge” means the amount of profit that for-profit schools may include in the certified actual cost per student.

“Tentative tuition rate” means the original budgeted tuition rate charged to a sending district board of education for the school year prior to the final tuition rate charged determined as a result of the audited financial statements.

6A:23-4.2 Tuition rate procedures

(a) For determining the tuition rate for the school year for approved private schools for the disabled located in New Jersey, the certified actual cost per student means the actual allowable cost for the school year plus the applicable maximum surcharge/public school placement restricted working capital fund divided by the average daily enrollment for the school year except as modified in (a)2 and 3 below. Based on the certified actual cost per student, the school's board of directors shall determine the final tuition rate charged which is an amount less than or equal to the certified actual cost per student. The certified actual cost per student and final tuition rate charged shall be identified in the audited financial statements submitted pursuant to N.J.A.C. 6A:23-4.9.

1. Actual allowable costs for the program shall be based on all costs of student instruction from July 1 through June 30. Such costs shall be consistent with the individualized education program (IEP) of a disabled student, and shall include all costs required to implement all students' IEPs including all related services. Such costs shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

2. If the private school for the disabled proposes to charge a final tuition rate in excess of 10 percent of the tentative tuition rate charged, the private school shall notify each sending district board of education and the Assistant Commissioner, Division of Finance that such an increase will be charged and the reason for the increase within 45 days after the private school becomes aware of such increase.

i. If the sending district board of education and the Assistant Commissioner, Division of Finance are not notified within the 45 day time period, the private school shall charge only the 10 percent increase.

3. Costs for the program shall include instructional costs and administrative costs, as defined in the chart of accounts, as follows:

i. For the 2002-2003 school year, minimum instructional costs of 50 percent and maximum administrative costs of 35 percent;

ii. For the 2003-2004 school year, minimum instructional costs of 50 percent and maximum administrative costs of 30 percent; and

iii. For the 2004-2005 school year and years thereafter, minimum instructional costs of 55 percent and maximum administrative costs of 25 percent.

4. Unless otherwise determined by (b) below, the approved private school for the disabled shall charge one tentative tuition rate, charge one final tuition rate, and calculate one certified actual cost per student for the school year. All tuition rates shall be reflected on a per diem and school year basis (number of enrolled days in the school year times the per diem rate). Those schools that operate both a 10 month and an extended school year shall reflect tuition rates for both the July/August through June and September through June school years.

5. Costs for all related services shall be included in the actual allowable costs when calculating the certified actual cost per student. The private school may not bill the sending district board of education separately for related services that are required by a student's initial or subsequent IEP.

6. Total costs for programs in operation less than the minimum of 180 days of instruction (September 1 through June 30) shall be reduced by 1/180 for each day less than the 180 day requirement to determine actual allowable costs.

7. The average daily enrollment for students enrolled in a program for a time period other than a full day shall be based on the total number of hours actually enrolled during the school year divided by the total possible number of hours in the school year.

(b) An approved private school for the disabled has the option of charging one tuition rate per school location for the school year or separate tuition rates by class type by school location for the school year. Private schools for the disabled that choose to charge by class type shall:

1. Maintain bookkeeping and accounting records by class type by school location for the school year;

2. Charge a separate tuition rate for each class type served regardless of the number of class types served;

3. Prepare in the Department-prescribed format the audited costs by class type for the first two years that tuition is charged by class type in order for the Commissioner to determine the tentative tuition rates in accordance with (i) below; and

4. Determine on a pro rata basis the individual share of a particular allowable cost item for a class type, when it is not possible to charge the actual amount expended, in accordance with the following ratios or another acceptable method as approved by the Commissioner:

i. Ratio of average daily enrollment in each class type to the total average daily enrollment;

ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; and

iii. Direct costs.

(c) Direct costs are costs which can be identified specifically to a program and/or revenue source and shall be recorded in the prescribed bookkeeping and accounting system and used in determining the respective actual cost per student.

(d) Indirect costs are costs that are incurred for a common or joint purpose and not readily assignable to a program and/or a revenue source. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year.

(e) An entity that operates only as a private school for the disabled and operates one or more tuition programs at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above; and

2. Indirect costs on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner, or in accordance with either of the following ratios:

i. Direct costs for each program determined pursuant to (c) above to total direct costs; or

ii. Average daily enrollment for each program to total average daily enrollment.

(f) An entity that operates other programs in addition to a private school for the disabled program(s) at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above;

2. Indirect cost centers established as follows:

i. A cost center, which shall include indirect costs that are allowable costs in accordance with N.J.A.C. 6A:23-4; and

ii. A cost center, which shall include indirect non-allowable costs that are not chargeable as allowable costs in accordance with N.J.A.C. 6A:23-4.

3. Allowable indirect costs shall be included on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:

i. Direct costs for each program determined pursuant to (c) above to total direct costs; or

ii. Average daily enrollment for each program to total average daily enrollment.

(g) Whenever a facility used by an approved private school for the disabled is also used for unrelated activities and/or enterprises by related or unrelated parties, all costs, direct or indirect, associated with such facilities and operations shall be charged according to the associated activities and/or enterprises which they benefit. Indirect costs shall be distributed in accordance with an equitable allocation plan approved by the Commissioner.

(h) A tentative tuition rate shall be established by written contractual agreement between the approved private school for the disabled and the sending district board of education. The tentative tuition rate charged shall be an amount not in excess of the tentative tuition rate established in accordance with (i) and (j) below for the ensuing school year. The written contract shall be on a form prescribed by the Commissioner and shall be executed prior to the enrollment of a student.

1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the student was enrolled during the month, for each month the student is enrolled. The per diem rate is determined by dividing the tentative tuition rate for the school year by the estimated number of days school will be in session, but not less than 180 days, and rounding to the nearest two decimal places.

2. The contractual agreement shall require the sending district board of education to pay the approved private school for the disabled the tentative tuition charge no later than the first of each month prior to the services being rendered. The sending district board of education shall pay the tentative tuition charge for a student enrolled during the month by the first day of the second month services begin . A sending district board of education that pays tuition 30 days after the first day of each month may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

(i) The tentative tuition rate for each approved private school for the disabled for the ensuing school year shall be determined by the Commissioner no later than January 1 preceding the beginning of the ensuing school year.

1. For school years beginning 2002-2003, the tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year and the sum of 1.0 and twice the spending growth limitation of 0.03 or the CPI, which ever is greater. Under no circumstances shall the tentative tuition per student determined be less than the tentative tuition rate per student charged in the prior school year for the school years 2002-2003 and 2003-2004.

2. The tentative tuition rate shall include:

i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23-4.6; and

ii. For non-profit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23-4.7.

(j) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for the disabled can prove to the satisfaction of the Commissioner that the tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship, the approved private school for the disabled shall be required to submit its request for a higher tentative tuition rate for the entire school year no later than January 31 preceding the beginning of the ensuing school year. The request shall be forwarded to the Assistant Commissioner, Division of Finance and include, but may not be limited to, the following information:

i. A budget reflecting projected costs, working capital fund or surcharge, estimated enrollment and the requested tuition rate based on this information;

ii. A detailed explanation of the need for increases in excess of those already provided in the tentative tuition rate calculation; and

iii. A financial report which is properly completed and in the format prescribed by the Commissioner for the six months of operations ending December 31 immediately preceding the school year for such request. This report format is available at the Division of Finance, P.O. Box 500, Trenton, New Jersey.

(k) The final tuition rates charged shall be certified by the Commissioner according to this subchapter.

(l) If the Commissioner determines that the tentative tuition rate for the school year established by written contractual agreement is greater than the final tuition rate charged for the school year, the private school for the disabled shall pay or credit the difference to subsequent tuition bills for each sending district board of education no later than June 30 of the school year in which the final tuition rate charged is received from the Commissioner, or not more than 30 days after an appeal on a certified amount is finally resolved. The same final tuition rate charged shall be charged to each sending district board of education.

(m) If the Commissioner determines that the tentative tuition rate for the school year established by written contractual agreement is less than the final tuition rate charged for the school year, the approved private school for the disabled may charge each sending district board of education all or part of the difference owed, but the same final tuition rate charged shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date, but not later than the end of the second school year following the year for which the actual cost per student is certified.

(n) The contract and the form to establish the tentative tuition rate for the ensuing school year shall be prepared by the Commissioner.

(o) A list of maximum salaries by job title and county according to the job titles contained in N.J.A.C. 6:11 which pertain to private schools for the disabled shall be calculated and published by the Commissioner. Except for administrative job titles referenced in (p) below, maximum salaries shall be based on the highest contracted salaries of certified staff by job title in a district board of education for any prior year indexed by the average increase in salary between the two preceding school years for each job title. Such salaries shall be based on a 12-month contract period from July 1 through June 30, and the maximum salary of a private school staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum salary calculated be less than the corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities.

(p) A list of maximum salaries by administrative job titles and county according to the job titles contained in N.J.A.C. 6:11 and 6A:23-4.1 which pertain to private schools for the disabled shall be calculated and published by the Commissioner. Maximum salaries shall be based on the highest contracted salary by administrative job title for the entire State in a district

board of education, special services district board of education and educational services commissions with comparable average daily enrollments for any prior year indexed by the average increase in salary between the two preceding school years for each job title. Such salaries shall be based on a 12-month contract period from July 1 through June 30, and the maximum salary of the private school staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education and educational services commission with an ADE equal to or less than the highest private school ADE will be considered comparable. Under no circumstances shall the maximum salary calculated, be less than the corresponding salary in the prior year for the same job title.

(q) For the 2001-2002 school year and years thereafter except as noted:

1. For a staff member who was employed by the private school prior to the 2001-2002 school year whose salary is greater than the maximum salary calculated by the Commissioner in accordance with 4.2(o) and (p), such salary shall be frozen at the 2000-2001 salary level reflected on the Fiscal Information Report for 2000-2001 as submitted in July of 2000 to the Department and subject to the provisions of paragraph 3 below, or until such time as the maximum salary calculated by the Commissioner in accordance with 4.2 (o) and (p) exceeds the 2000-2001 salary level;

2. For a staff member who was employed by the private school prior to the 2001-2002 school year whose salary as reflected on the fiscal Information Report for 2000-2001 as submitted in July of 2000 to the Department and subject to the provisions of paragraph 3 below is less than the maximum salary calculated by the Commissioner in accordance with 4.2(o) and (p), the maximum salary shall be determined in accordance with 4.2(o) and (p);

3. For a staff member who was employed by the private school prior to the 2001-2002 school year:

- i. Whose job title remained the same from 1999-2000 but whose salary changed in 2000-2001 from the amount on the Fiscal Information Report for 2000-2001 as submitted to the Department in July of 2000, the salary increase must have been reflected in the employee's paycheck on or before November 15, 2000;

- ii. Whose job title changed during 2000-2001 and is not on the Fiscal Information Report for 2000-2001 as submitted to the Department in July of 2000, the new job title and new salary must have been reflected in the employee's paycheck on or before November 15, 2000;

iii. Who was a new employee in 2000-2001 and whose name was not on the 2000-2001 Fiscal Information Report for 2000-2001 as submitted to the Department in July of 2000, the salary shall be based on the contractual agreement between the parties;

iv. Whose salary falls under items i through iii above, the salary is subject to Commissioner review and approval for determining the maximum salary for 2001-2002 and subsequent school years; and

4. For a staff member in a new private school opening on or after July 1, 2001, for employees whose employment commences on or after July 1, 2001 at private schools existing as of July 1, 2001 and for employees employed as of July 1, 2001 whose job titles change from 2000-2001 to a subsequent school year, the maximum salaries shall be determined in accordance with (o) and (p) above.

(r) A list of the recognized job titles in accordance with N.J.A.C. 6:11 that require certification and N.J.A.C. 6A:23-4.1 that require a bachelor's degree, shall be published by the Commissioner. Private schools for the disabled shall only hire staff or consultants in job titles that require certification or a bachelor's degree if such titles are included on this list, or if such titles are unrecognized job titles for instruction that are approved in accordance with N.J.A.C. 6:11-3.3(a). The private school for the disabled may use unrecognized administrative job titles, but maximum salaries of these titles are restricted in accordance with N.J.A.C. 6A:23-4.5(a)9.

(s) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day, or to a third party location and require the services of a private school staff person, the ADE for tuition rate purposes shall be computed as follows:

1. Regardless of the time period that a student is enrolled in a program outside the private school, the student shall be considered a full time student, the student's ADE shall be considered as 1.0 and the sending district board of education shall pay the full-time tuition rate.

2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

(t) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day or to a third party location, the tuition rate shall be computed as follows:

1. The calculation of the student's ADE shall be based on the number of hours enrolled in the program to the total number of possible hours of the program
2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

6A:23-4.3 New private schools for the disabled

(a) A prospective applicant shall file an application and obtain approval of such application from the Commissioner prior to operating an approved private school for the disabled. A currently approved private school for the disabled which is expanding a program to another location or opening a new program is considered a new private school which shall be approved by the Commissioner prior to operating. A currently approved private school for the disabled which is expanding a program, or adding a new class type(s) to be housed in another building at the current location, shall not be considered a new private school for the disabled and shall charge as a tentative tuition rate the tuition the school is currently charging.

(b) An applicant applying for approval as a new private school for the disabled shall provide evidence to the Department that there is sufficient need for the new school private school as defined as follows:

1. The applicant shall submit documentation of intent signed by the superintendent of the sending district board of education to place a student in the new program and verification that there is no other appropriate placement for the student(s); and
2. The applicant shall document the need for a minimum of 16 students in order to be approved by the Commissioner.

(c) Programs that meet the above criteria, shall be approved as follows:

1. The school will receive preliminary approval to operate for a two year period, after which the school must provide documentation that the school has a minimum ADE of 16 by the end of the second school year;
 - i. A school meeting the minimum ADE of 16 shall receive new school approval;
 - ii. A school not meeting the minimum ADE of 16 shall have their preliminary approval status revoked and no longer be considered an approved private school for the disabled;
- and

iii. Any previously approved private school for the disabled that which falls below the minimum ADE of 16 in a school year shall have their status as an approved private school for the disabled rescinded and shall be will be considered preliminarily approved. The school shall attain a minimum ADE of 16 by the end of the third school year after the year in question or their approval shall be rescinded in accordance with (c) 1ii above; and

iv. Private schools for the disabled operating in and affiliated with a public school are exempt from section (c) 1iii above.

(d) Start-up costs, if any, may not be directly expensed and shall be amortized over a 60 month period.

(e) For the first two years of operation of an approved private school for the disabled which was first in operation after the 2000-2001 school year, the estimated actual cost per student and per diem rate at each site or in each program shall be established annually and be based on budgeted allowable costs. These estimated cost(s) shall be submitted to the Commissioner for approval or disapproval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Commissioner which shall provide for, but not be limited to, the following:

1. Fiscal and programmatic data;
2. Projected allowable cost items and projected enrollments;
3. A projected budget which reflects administrative costs not in excess of and instructional costs not less than the percentages identified in N.J.A.C. 6A:23-4.2(a)3 and as defined in the chart of accounts;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance.

(f) If the Commissioner approves the estimated actual cost(s) per student, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per student for the first two years of operation.

(g) If, after each year of operation, the Commissioner determines that the actual cost per student or per diem rate differs from the estimated cost per student or per diem rate, the tentative tuition charges shall be adjusted in accordance with the provisions of this subchapter.

6A:23-4.4 Bookkeeping and accounting

(a) An approved private school for the disabled shall maintain accounting and bookkeeping systems as prescribed in Financial Accounting for New Jersey Private Schools for the Disabled issued by the Department in accordance with the following standards:

1. Accounts shall be kept in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants, except as already modified in this chapter.

2. At a minimum, accrual accounting shall be used on a quarterly basis.

3. Fixed asset expenditures of \$2,000 or more shall be capitalized and depreciated using the straight line method and a useful life consistent with current Federal tax law, except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.

4. Leasehold improvements shall be capitalized and depreciated using the straight-line method and a useful life equal to that of the lease, but not less than five years.

5. Asset, liability and fund balance accounts, as well as expenditure and revenue accounts shall be maintained.

6. Non-profit organizations shall maintain financial records on a fund basis which requires that restricted or unrestricted donations shall be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.

7. A chart of accounts issued by the Commissioner shall be maintained by each private school for the disabled. Effective July 1, 2002, a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems 1990, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Commissioner for use in the accounting systems of all private schools for the disabled and shall be used for financial reporting to the Department. For entities that operate other programs and the total private school tuition expenses are less than 51 percent of the entity's total expenses, the Commissioner may approve the use of an alternative chart of

accounts but the private school shall provide evidence that such chart of accounts may be cross-walked to the prescribed chart of accounts.

8. If multiple facilities for a private school have been approved, financial information shall be segregated by facility in the bookkeeping records. If the private school chooses to charge tuition rates by class type, financial information shall be segregated by class type in the bookkeeping records. Bookkeeping records shall include, but not be limited to:

- i. Cash receipts journal;
- ii. Cash disbursement journal;
- iii. General ledger;
- iv. Tuition ledger;
- v. Payroll journal; and
- vi. Fixed asset inventory.

9. Documentation to verify postings shall be maintained. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements or any payment for which invoices or cash register receipts are not used.

10. A payroll shall be prepared and supported by an accurate employee time record in a format prescribed or approved by the Commissioner, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at least semi-monthly.

11. A financial report shall be prepared in a format prescribed or approved by the Commissioner each quarter at a minimum for the school year program. This report shall be submitted to the school's governing body. Acceptance of the financial report shall be documented in the minutes of the meetings.

12. Good internal control practices shall be maintained which include the separation of duties such as the recording and authorizing of checks and purchase approvals.

13. An approved private school for the disabled shall use the mandated tuition contract prescribed by the Commissioner for each student received from a district board of education. The mandated tuition contract may only be revised by the private school for the disabled or the sending district board of education with prior written approval by the Commissioner.

14. An approved private school for the disabled that incurs contingent pay increases shall have in place an employee contract that contains the criteria by which the increase will be paid. The payment of such increase shall be made if the contractual contingencies are met. The contract shall contain at least the following items:

- i. The date and signature of both the staff member and authorized school representative;
- ii. The specific performance or contingency which shall be met to generate the increase; and
- iii. The specific dollar amount or percentage of original contracted salary to be paid.

15. An approved private school for the disabled that incurs merit pay increases shall have adopted a formal board policy that outlines the criteria of the merit pay plan(s). The plan(s) shall be filed with the Commissioner who may exclude from tuition any merit award(s) if the sole purpose of the award(s) is to avoid returning unexpended tuition funds to public schools. The plan(s) shall include the following:

- i. Eligibility for all employees;
- ii. Basis by which the pay is earned;
- iii. The amount of the awards by plan(s);
- iv. The maximum number of awards to be given by plan(s) for each year; and
- v. The date of board approval and date of initiation of the plan(s).

16. A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed \$1,500 and, disbursements shall not exceed \$150, except in the case of an emergency.

17. A student activity fund shall be approved by the governing body and supported by documentation. Revenues derived from public school placement tuition shall be used to supplement, not supplant, student contributions.

18. A mileage record shall be maintained for each school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner. The mileage record shall be maintained on a trip by trip basis and include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total personal miles

to total miles shall be applied to all costs associated with the vehicle(s). Vehicle costs may include, but not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, insurance and car phone.

19. Upon request from the Commissioner, a profit-making approved private school for the disabled shall provide a copy of the Internal Revenue Service (IRS) tax return and a non-profit approved private school for the disabled shall provide a copy of IRS form 990 to the Department .

20. An approved private school for the disabled shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the audit.

21. A non-profit entity that has chosen to cease operations as a non-profit private school for the disabled shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the private school's last five years of operation. The distribution shall be based on each district board of education's total ADE in the private school for the last five years of operation to the private school's total ADE for the same period. Within 180 days of closing, the private school shall file with the Commissioner a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.

22. An approved private school for the disabled shall ensure that school staff, outside consultants and subcontractors including members of a management company hold the proper school certification, license or bachelor's degree to provide the services being rendered.

(b) An approved private school for the disabled which receives a refund(s) from a current or prior year expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged, which shall reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.

(c) An approved private school for the disabled shall, each year, execute an employment contract with each school employee whose position requires a certificate, license or a bachelor's degree, which shall contain at least the following information:

1. The name of employee;
2. The dates of employment;
3. The work hours;

4. Certification(s) and/or degree(s) held;
5. A job description;
6. The job title; and
7. The salary.

(d) The approved private school for the disabled shall request and receive approval to purchase or rent in a related party transaction an administrative or business office at a location other than at the private school of the disabled. A member of the County Office of Education shall conduct an on-site facility review to determine if there is sufficient space at the school for these operations, and/or the private school shall file documents with the Assistant Commissioner, Division of Finance to substantiate the need for additional space.

(e) Employees of an approved private school for the disabled shall provide the instructional program to the students for which they are compensated during the hours the school is in session.

(f) An approved private school for the disabled shall establish, maintain and distribute an employee handbook to all staff. The employee handbook shall contain an outline of all employee fringe benefits that shall include, but may not be limited to, the following: health insurance coverage, life insurance, type(s) and qualification for pension(s) and sick day benefits. All employees' fringe benefits shall be adopted in a Board of Director's meeting and documented in the board minutes prior to implementing the fringe benefit.

(g) An approved private school for the disabled that loans funds to any party shall charge interest at a rate equal to the prime rate. The Department shall compute imputed interest on those funds that are loaned at less than the prime interest rate or interest free. Such imputed interest revenue shall be netted against any short-term interest costs first, and then long term interest costs incurred by the private school.

(h) An approved non-profit private school which has a positive public school placement restricted working capital fund balance and a net deficit fund balance in all other fund balances (restricted and unrestricted) for more than three consecutive fiscal year-ends shall file a corrective action plan with the Assistant Commissioner, Division of Finance within 60 days after the end of the third fiscal year. The Department shall monitor the corrective action plan and if the deficit is not decreasing, the private school shall be put on conditional approval status until such time that the deficit decreases.

(i) An approved private school for the disabled that accumulates sick and/or vacation leave shall do so in accordance with Financial Accounting Standards Board Statement No. 71 (FASB; 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116) incorporated herein by reference and may only include these costs in program expenses when the compensation is actually paid.

(j) Beginning in the 2001-2002 school year, private schools for the disabled shall attempt to use the job titles that are in use in the public schools in accordance with N.J.A.C. 6:11, and the list published each year by the Commissioner or those approved in accordance with N.J.A.C. 6:11-3.3(a). The private schools should minimize the use of unrecognized job titles.

(k) A private school shall issue salary increases after the start of the fiscal year only in one or more of the following cases and in accordance with N.J.A.C. 6A:23-4.2(q):

1. The increase is due to a staff member(s) promotion that results in additional job responsibilities;
2. The increase is due to a staff member(s) attaining a higher degree or certification;
3. The increase is in accordance with (a)14 or 15 above; or
4. The increase has been approved by the Department after review of a formal written request to the Assistant Commissioner of Finance documenting the facts necessitating the increase, if one of the above cases was not met.

(l) Staff members functioning in the following positions without the proper bachelor's degree as defined in section N.J.A.C. 6A:23-4.1 shall either obtain the proper bachelor's degree no later than June 30, 2006 or be removed from the position:

1. Director;
2. Assistant Director;
3. Executive Director; and
4. Business Manager.

6A:23-4.5 Non-allowable costs

(a) A cost that is not allowable in the calculation of the certified actual cost per student means the following:

1. An administrative cost in excess of and/or instructional cost less than the percentages indicated in N.J.A.C. 6A:23-4.2(a);

2. The cost of maintaining an administrative office in a private home or other residence;
3. An advertising cost in excess of 0.5 percent of the private school's actual allowable costs not including advertising;
4. Any cost associated with public relations and lobbying including salaries and fringe benefits except those incurred within item (a)3 above;
5. Any cost other than those governed by (a)52 below associated with lobbying in an attempt to influence:
 - i. The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or
 - ii. The introduction of Federal legislation, State legislation or State rulemaking, or the enactment or modification of any Federal legislation, State legislation or State rulemaking.
6. The salary of a professional staff member, consultant or subcontractor including a member of a management company who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6:11 or bachelor's degree required in accordance with this subchapter;
7. The salary and fringe benefits of a staff member for time not expended and/or services not performed except in accordance with N.J.A.C. 6A:23-4.5(a) 58 and 59;
8. A salary in excess of the associated maximum salary determined in N.J.A.C. 6A:23-4.2(o), (p) and (q) for a staff member or consultant whose position requires certification, license or a bachelor's degree including a director, assistant director, executive director, and business manager. Part-time or split-time positions shall be prorated including salaries in entities defined in N.J.A.C. 6A:23-4.2 (e) and (f).
9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum salary in the same county according to the list of maximum salaries determined in N.J.A.C. 6A:23-4.2(o), (p) and (q) whose position does not require certification, license or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23-4.1. Part-time or split-time positions shall be prorated including salaries in entities defined in N.J.A.C. 6A:23-4.2(e) and (f);
10. The cost of fringe benefits which are based on a non-allowable salary;

11. A legal, accounting or consultant fee resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering at least the following factors:

- i. Overall merit of the claim; and
- ii. Whether the challenge serves the public interest;

12. A consultant fee for services which are not detailed in an executed written contract which shall include at least a list of the nature of the services provided, the approximate number of days to complete the work, the charge per day and the product or outcome of the consultation. The consultant shall hold the appropriate school certification when such certification exists;

13. Total contributions, donations, awards and scholarships in excess of \$1,500;

14. Depreciation unacceptable under N.J.A.C. 6A:23-4.4(a)3 and depreciation on:

- i. Donated goods and assets;
- ii. That which is not based on estimated straight-line method; and
- iii. Autos in excess of the dollar or percentage limitation contained under Internal

Revenue Service Code Section 280F;

15. The yearly cost of a lease for a vehicle covered under Internal Revenue Service Code section 280F in excess of the amount allowed by the Internal Revenue Service;

16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of disabled children;

17. Total costs in excess of \$1,000 incurred for entertainment expenses;

18. The cost of food/beverages in excess of \$3,000 for activities such as, but not limited to staff meetings, parent/teacher meetings, workshops and professional development seminars for parents or teachers;

19. The cost of a fine or penalty which results from a violation of or failure by the school to comply with a Federal, State and/or local law or rule;

20. The cost of meals for students, unless the meals meet the nutritional requirements of the Child Nutrition Program;

21. The cost of keyman insurance except where a term insurance policy is required by a lender as collateral for a loan;

22. The cost of an employee's life insurance coverage, both term and whole life

policies, in excess of 3.5 times their gross salary;

23. Fringe benefits:

i. When the benefits are determined in an arbitrary or capricious manner rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education; and

ii. When the fringe benefit has not been adopted by the school's Board of Director's at a board meeting prior to the implementation of the benefit, documented in the board minutes and the employees were not made aware of the policy;

24. The cost of fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest which is done to raise capital or obtain a contribution;

25. Goodwill;

26. Interest costs on loans when:

i. Interest is in excess of the general prevailing rate at the time the loan was taken;

ii. The loan is a less-than-arm's length/related party transaction which has not been previously approved by the Department and not repaid in accordance with the Department's approval letter; and

iii. The loan is not exclusively used to meet program needs;

27. Interest costs on long-term loans or mortgages when:

i. The loan is used for other than financing of fixed assets;

ii. The loan is not secured by the fixed asset being financed; and

iii. The interest costs are on the portion of the loan term, which exceeds the recovery period for depreciation of the fixed asset securing the loan;

28. A loss incurred on the sale or exchange of fixed assets between related parties;

29. The write-off of uncollected accounts receivable (bad debts) before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable;

30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;

31. Pension costs that are:

i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406, and its successor legislation and that do not exceed costs allowed by the Internal Revenue Service;

- ii. For a non-qualified pension plan(s);
 - iii. For a defined contribution plan in excess of the lesser of 25 percent of the employee's gross salary or \$30,000 and subsequent changes made to the IRS maximum percentage and maximum dollar amount; and
 - iv. For a defined benefit plan in excess of an amount, by employee, which would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 60 times the highest three year average salary and at an age before 55;
32. The cost associated with a conference, meeting or seminar held in countries not contiguous to the United States;
33. The costs of a salary increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6A:23-4.4(a)14 or 15 or the merit pay award(s) are not consistent with the plan(s) on file with the Commissioner;
34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available, which shall be documented by the airline or travel agent;
35. The cost for meals and hotel accommodations associated with daily or overnight travel in excess of those contained in New Jersey Office of Management and Budget (OMB) Circular Letter 98-03 OMB and subsequent circulars;
36. A payment of a bonus;
37. A loss on an investment;
38. The cost of staff salary, supplies or printing and reproduction of a material for a research activity;
39. Payment of Federal, State and local income taxes on income other than tuition;
40. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
41. All personal expenses, such as a personal travel expense or repair on a personal vehicle;
42. Personal use of a school-owned or leased vehicle which includes to/from work commutation;

43. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;

44. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;

45. Transportation costs for a student to and from school, except where the student's IEP require after school activities;

46. Rental costs for buildings and equipment when the lessor is not a separate legal entity;

47. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation in accordance with N.J.A.C. 6A:23-4.4(a)3, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense and maintenance costs) incurred by the sub-lessor. Profit, return on investment or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;

iii. Cost of purchasing/lease purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party, less depreciation calculated using the straight line method;

iv. Cost of personal services paid to a related party when such services are provided by an employee or consultant of the approved private school for the disabled acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year including, but not limited to, wages, salaries, management fees and fringe benefits; and

v. Cost of the purchase of services in excess of the actual allocated costs of ownership (such as salaries, fringe benefits, insurance, operation, maintenance, straight-line depreciation) incurred by the related party owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The purchase agreement shall include a list of anticipated costs to be incurred by the related party, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

48. Cost of a less-than-arm's length/related party transaction when the related party does not provide documentation to support the actual costs of ownership to the Commissioner when requested, and does not allow the Commissioner access to such information for review and audit during normal business hours. Documentation shall include, but is not limited to:

- i. The related parties' tax returns; and
- ii. The related parties' paid bills and canceled checks concerning the transaction;

49. Rental costs under sale and leaseback arrangements in excess of the amount that would be incurred had the organization continued to own the property;

50. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6A:23-4.2(g);

51. Cost of the year-end audited financial statements prepared by an individual who does not meet the requirements contained in N.J.A.C. 6A:23-4.9(a);

52. Costs for membership in civic, business, technical and professional organizations when the cost is:

- i. Not reasonably related to the value of the services or benefits received;
- ii. For membership in an organization which devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of

disabled students and such activities are not subsidized by sources other than membership fees from private schools for the disabled;

iii. Not an established annual rate charged to all members, but one which is periodically adjusted during the year; or

iv. Not supported by an annual affidavit signed by the organization's board of directors indicating that all legal and lobbying costs not directly associated with the educational instruction programs for disabled students were funded by sources other than dues from private schools for the disabled;

53. Salary of a staff member which is not properly supported by the employee time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23-4.4(a)10;

54. A salary or payment made to a member(s) of the board of directors/trustees for services performed in their capacity as a member of the board of director/trustees;

55. Cost of a pension plan and/or medical benefits for current or retired members of the board of directors/trustees;

56. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency or a new Jersey approved private school for the disabled with at least 10 years of service in an approved private school for the disabled;

57. Costs of salaries and fringe benefits of unrecognized position titles which are not properly approved in accordance with N.J.A.C. 6:11-3.3(b);

58. Cost of employee severance pay in excess of four weeks' salary;

59. Cost of a buyout of an employee contract in excess of 90 days;

60. Cost of a salary or consultant fee paid to a full-time employee or consultant for performing more than one administrative function in the private school;

61. Cost to purchase or rent in a related party transaction an administrative office or business office at a location other than at the private school location which was not approved in accordance with N.J.A.C. 6A:23-4.4(d);

62. Cost of a salary increase paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23-4.4(k); and

63. Cost found to be patently unreasonable by the Commissioner or his or her

representative(s) or the independent auditor/accountant.

6A:23-4.6 Surcharge

For profit-making schools, the school's tuition rate may include an annual surcharge up to 2.5 percent of the private school's allowable actual costs.

6A:23-4.7 Public school placement restricted working capital fund

(a) For non-profit schools, the school's tuition rate may include an amount which will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs but annually may not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year.

(b) Interest and/or dividends earned from the investment of tuition funds shall be applied to reduce the school's total allowable costs when calculating the certified actual cost per student.

(c) Any gain on the sale of fixed assets originally purchased through public school restricted funds shall be added to the public school placement restricted working capital fund.

6A:23-4.8 Calculation of student attendance

(a) Each approved private school for the disabled shall maintain a school register, in accordance with N.J.A.C. 6:3-9, to record all student attendance.

(b) Each approved private school for the disabled shall submit to the Commissioner by September 1 verification of the average daily enrollment for the previous year on forms provided by the Department.

(c) Each approved private school for the disabled shall identify private placements in the register.

(d) Each approved private school for the disabled shall maintain a separate register by class type.

6A:23-4.9 Audit requirements

(a) Regardless of the fiscal year of the school, each approved private school for the disabled shall, by November 1 of each year, submit to the Commissioner audited financial statements based on the July 1 to June 30 school year. The audit shall be prepared by an

independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey. The accountant shall hold an uncanceled registration license as a public school accountant of New Jersey. Independence will be determined in accordance with standards set forth in the Code of Professional Ethics issued by, and available from, the American Institute of Certified Public Accountants (AICPA). Additionally, an accountant shall not be considered independent if such accountant or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the private school for the disabled.

(b) The audit shall follow generally accepted auditing standards (GAAS), as set forth in the Codification of Statements on Auditing Standards, 1993, published for the American Institute of Certified Public Accountants, (1211 Avenue of the Americas, NYC, NY 10036-8775), incorporated herein by reference as amended and supplemented and when applicable, OMB Circular A-133 or NJOMB Circular Letter 98-07 and successor pronouncements. The Commissioner shall establish auditing guidelines and publish the format of the audit.

1. The audit shall include such information as: basic financial statements, required supplementary information, schedules and narrative explanations.

(c) The audited financial statements shall determine the certified actual cost(s) per student and final tuition rate(s) charged at the end of the school year.

(d) The auditor and school management shall discuss the results of the auditor's determination of the certified actual cost per student in order for management to determine the final tuition rate charged as a result of the audit. The final tuition rate charged shall be an amount equal to or less than the certified actual cost per student. The audit report shall contain a letter signed by both the school auditor and an authorized school representative indicating that both parties met and discussed the audit and that the determination of the final tuition rate charged was a management decision.

(e) Within 60 days of receipt of the year-end audit, management shall develop a corrective action plan in response to recommendations contained in the year-end audit and shall file such corrective action plan with the Commissioner. When the corrective action is based on the requirements of this subchapter, the Commissioner shall determine if the corrective action is adequate and, when appropriate, require additional action.

(f) The approved private school for the disabled shall not amend the final tuition rate charged after certification by the Commissioner.

(g) Any adjustments necessary as a result of the certified audit or a tuition audit performed by the Commissioner which are in excess of \$10.00 per sending district board of education shall be made in accordance with N.J.A.C. 6A:23-4.2(l) and (m).

(h) Audits filed after the November 1 due date shall cause the estimated actual cost per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and N.J.A.C. 6A:23-4.2(j) will not apply.

(i) Failure to comply with this section may result in the Commissioner placing the approved private school for the disabled on conditional approval status.

6A:23-4.10 Appeals

(a) The decision of the Commissioner, regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6A:23-4.2(j), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23-4.3 and regarding conditional approval status pursuant to N.J.A.C. 6A:23-4.9(i), may be appealed in accordance with N.J.A.C. 6A:3.

(b) The decision of the Commissioner in regard to certification may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27.

(c) The decision of the Commissioner in regard to all sections of N.J.A.C. 6A:23-4.3, New private schools for the disabled, may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27.

6A:23-4.11 Out-of-State approved private schools for the disabled

(a) Out-of-State private schools for the disabled shall be approved to provide special education programs by the Department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Office of Special Education, New Jersey Department of Education in accordance with N.J.A.C. 6A:14-7.1(e).

(b) The Commissioner shall abide by the tuition regulations for approved private schools for the disabled adopted by the Department of education or other regulatory agency in the state in which the private school for the disabled is located. The approved private school for the disabled

shall submit verification of the approval of the tuition rate to the Commissioner either on prescribed forms or verification from the out-of-State Department of education or other regulatory agency.

(c) If the out-of-State approved private school for the disabled is located in a state in which the Department of education or other regulatory agency does not approve or sanction tuition rates, such tuition rates shall be determined in the following manner:

1. The approved private school for the disabled and the sending district board of education or state agency that determined the placement shall mutually agree to the tuition rate. The tuition rate shall be agreed upon prior to the child's placement, and a letter indicating agreement of such rate shall be forwarded to the Commissioner.

2. An approved private school for the disabled which is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the approved private school for the disabled, the sending district board of education and the Department of Human Services, Office of Education. The tuition rate shall be agreed upon prior to the child's placement and documentation of such rate shall be forwarded to the Commissioner.

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school for the disabled shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey district board of education or agency. The cost of the audit contained in N.J.A.C. 6A:23-4.9 may be charged to the sending district board of education or agency that did not mutually agree to the tuition rate.

6A:23-4.12 Inspection of records

(a) All financial and accounting records maintained by the approved private school for the disabled, as required by this subchapter, shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23-4.4(a)20.

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for the disabled shall be open

during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23-4.4(a)20.

(c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23-4.4(a)20.

6A:23-4.13 Fiscal monitoring of private schools and corrective action plans

(a) The Commissioner shall monitor approved private schools for the disabled in accordance with this subchapter. On site monitoring shall be conducted at least every six years.

(b) The monitoring process may include, but is not limited to, all financial information required in this subchapter.

(c) After the monitoring process is completed, a report shall be written and sent to the private school, the county superintendent and the school's auditor.

(d) If the school receives a final report that indicates noncompliance, a corrective action plan shall be developed and submitted to the Department for approval.

(e) The corrective action plan shall include, but is not limited to, the following:

1. Objective and strategies for correcting each noncompliance item; and
2. The dates by which noncompliance will be corrected.

(f) When an approved private school for the disabled is determined to be in noncompliance, the Commissioner may:

1. Issue a conditional approval status when noncompliance with State rules and/or implementation of the corrective action plan is demonstrated; or
2. Immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

(g) The actions of the Commissioner may be appealed according to N.J.A.C. 6A:3.

(h) Annually, the Department shall publish the results of the on-site fiscal monitorings of private schools for the disabled.

6A:23-4.14 Fiscal information

(a) Annually, each approved private school for the disabled shall submit information to the Division of Finance including, but not limited to:

1. Fiscal and program information, including:
 - i. The number of students served;
 - ii. The number of and types of class types;
 - iii. Number of schools days; and
 - iv. The daily hours in session;
 2. Staffing information, including:
 - i. A staff roster, including, but not limited to, names, job titles, salaries, hours worked, certification(s), degree(s) and license(s) held;
 3. An affidavit that the program meets the standards of, and is conducted in full compliance with the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Title II and III of the Americans with Disabilities Act, P.L. 101-336, N.J.S.A. 18A:46-1 et seq., this subchapter, and N.J.A.C. 6A:14; and
 4. An affidavit that the owners/operators of the program are aware of the non-allowable costs contained in N.J.A.C. 6A:23-4.5 and that such costs charged as allowable costs in the private school for the disabled tuition rate are consistent with the individualized education program of a disabled student and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.
- (b) Annually, the Department shall publish a Private School for the Disabled Comparative Spending Guide.
- (c) An approved private school for the disabled shall have a copy of the board of director's minutes, or for a partnership, the minutes of the partners meetings available upon request by the Department.

6A:23-4.15 Failure to comply with Department directives

The Department may place an approved private school for the disabled on conditional approval status when the school fails to comply with Department directives, such as, but not limited to, failure to refund tuition funds as a result of a Department tuition audit.